

4. (Three Times Amended) [The] An antibody [of Claim 3], wherein said antibody is deposited under ACC 2207 with the Deutsche Sammlung von Mikroorganismen und Zellkulturen GmbH (DSM).

### **REMARKS**

Claims 1-4 are pending in this application. The claims as pending are attached hereto as *Appendix A*.

#### **I. THE AMENDMENTS TO THE CLAIMS**

The Claims have been amended, without prejudice, for the purpose of more clearly defining what Applicants regard as the invention and to expedite prosecution. Applicants reserve the right to prosecute amended subject matter in one or more timely filed continuation, continuation-in-part, or divisional applications.

Applicants have amended Claim 4 to make it independent of Claim 3. Amended Claim 4 is fully supported in the Specification by, for example, Claim 4 as originally filed. The claims as amended are attached hereto as Appendix A.

#### **II. FORMAL MATTERS**

The Examiner objects to Claim 4 for depending from a rejected claim. Amended Claim 4 is an independent claim. Thus, Applicants respectfully request that this objection be removed.

#### **III. PRIORITY**

Applicants are entitled to claim the benefit of their originally filed German patent application. Applicants filed their original German application on March 1, 1995. Applicants filed an international application claiming priority to their German application and designating the United States on March 1, 1996. This international application entered the national phase in the United States as the above-referenced application. Applicants enclose herewith certified copies of Applicants' original German application and an English translation thereof. Applicants thus satisfy the requirements of 35 U.S.C. §§ 119 and 365 for

claiming priority to earlier filed foreign and international applications. Accordingly, Applicants respectfully request that they be granted the priority date of March 1, 1995.

**IV. REJECTION UNDER 35 U.S.C. § 102 (a)**

Claims 1 and 2 are rejected under 35 U.S.C. § 102(a) as being anticipated by Janssen *et al.*, 1995, *J. Biol. Chem.* 270:11222-29 ("Janssen"). Applicants respectfully traverse.

In order for a reference to qualify as prior art under 35 U.S.C. § 102(a) the reference must, *inter alia*, have been published prior to the applicant's priority date. Janssen was published on May 12, 1995. *See* Janssen, page 11222, upper right hand corner. As established above, Applicants are entitled to the priority date of March 1, 1995. As Applicants' priority date precedes the publication date of Janssen, Janssen is not available as an anticipating reference under 35 U.S.C. § 102(a). Accordingly, Applicants respectfully request that this rejection be withdrawn.

**V. REJECTION UNDER 35 U.S.C. § 103 (a)**

Claims 1-3 are rejected under 35 U.S.C. § 103(a) as allegedly being obvious over Janssen in view of Sevier *et al.*, 1981, *Clinical Chemistry* 27:1797-1806 (hereinafter "Sevier"). Applicants respectfully traverse.

In light of the foregoing, Janssen is not available as § 103 prior art against the instant Application. Without Janssen, Sevier fails to teach an antibody directed against a fusion polypeptide comprising a histidine portion comprising 6-18 histidine residues. Thus, Sevier alone fails to teach each and every element of the rejected claims. Therefore, Applicants respectfully request that this rejection under 35 U.S.C. § 103(a) be withdrawn.

## CONCLUSION

In view of the above amendments and remarks, the subject application is believed to be in good and proper order for allowance. Early notification to this effect is earnestly solicited.

If, in the opinion of the Examiner, a telephone conference would expedite the prosecution of the subjection application, the Examiner is encouraged to call the undersigned at (650) 493-4935. The Applicants also invite a personal interview with the Examiner, if the Examiner does not find the response persuasive and intends to maintain the rejections of record. It is believed that such an interview could respond to any further questions that the Examiner might have in connection with the subject application.

If any fee is required in connection with filing of this response, the Commissioner is authorized to charge Pennie & Edmonds LLP Deposit Account No. 16-1150 for the appropriate amount.

A copy of this sheet is attached.

Respectfully submitted,

Date November 8, 2000

  
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Enclosures

## APPENDIX A

1. An antibody against a fusion polypeptide comprising a histidine portion, wherein said antibody is directed against said histidine portion, and wherein said histidine portion comprises 6-18 histidine residues.
2. The antibody of Claim 1, wherein said antibody is a polyclonal antibody.
3. The antibody of Claim 1, wherein said antibody is a monoclonal antibody.
4. An antibody, wherein said antibody is deposited under ACC 2207 with the Deutsche Sammlung von Mikroorganismen und Zellkulturen GmbH (DSM).